Supreme Court, U.S.
FILED
DEC—18 1989
JOSEPH F. SPANIOL, JR.
CLERK

(6)

No. 88-2031

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES OF AMERICA,

Petitioner,

v.

MARSHA B. KOKINDA, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF PROJECT FOR PUBLIC SPACES, INC. AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

ANDREW J. EKONOMOU
(Counsel of Record)

515 Rhodes-Haverty Building
134 Peachtree Street, N.W.
Atlanta, Georgia 30303
(404) 221-1000

Counsel for Amicus Curiae

Lex Publishing Company, 2161 Monroe Drive, P.O. Box 13764, Atlanta, GA 30324

INTEREST OF THE AMICUS CURIAE

Project for Public Spaces, Inc. is a non-profit corporation specializing in the design and management of public spaces. Its objective is to improve and enhance the way in which public spaces are used. Project for Public Spaces, Inc. has completed over two hundred projects in seventy-five cities throughout the United States, including downtown developments, urban parks and plazas, transportation facilities, and mixed-use developments. It has expertise in the historical and functional uses of public spaces, and believes that information relating to the historical development and functional utilization of public areas, and particularly post offices, will be of assistance to the Court.

QUESTION PRESENTED

I. WHETHER THE POSTAL SERVICE'S BAN UPON SOLICITATION ON THE SIDEWALKS ADJACENT TO POST OFFICE BUILDINGS IS A CONSTITUTIONALLY-IMPERMISSIBLE INFRINGEMENT UPON THE EXERCISE OF FIRST AMENDMENT RIGHTS IN A PUBLIC FORUM?

TABLE OF CONTENTS

Page

INTEREST OF THE AMICUS CURIAE i

QUESTION PRESENTED ii

TABLE OF AUTHORITIES iv

CONSENT OF THE PARTIES 1

STATEMENT OF THE CASE 1

CONCLUSION 29

TABLE OF AUTHORITIES

CASES: **Page**

Hague v. CIO,
307 U.S. 496 (1939) 2

Martin v. Struthers,
319 U.S. 141, 147 (1943) 25

Monterey County Democratic Central Committee v. U.S. Postal Service,
812 F.2d 1194 (9th Cir. 1987) 19

Schneider v. State,
308 U.S. 147 (1939) 25

Sullivan v. New York Times,
376 U.S. 254 (1964) 10

Terminiello v. Chicago,
337 U.S. 1 (1949) 10

United States v. Grace,
461 U.S. 171 (1983) 25, 26

CONSTITUTIONAL PROVISIONS AND STATUTES:

First Amendment, United States Constitution ..... passim

39 U.S.C. § 101(a) 11

39 U.S.C. § 111.5(4) 18

39 U.S.C. § 404(a) 18

OTHER AUTHORITIES:

Alexander, C., "The City is Not a Tree," Design, No. 206, 46-55, cited in Czarnowski, Thomas V., "The Street as a Communications Artifact," in Stanford Anderson, ed., *On Streets*. Cambridge, MA: MIT Press, 1978. 4

Alexander, C., *A Pattern Language*. New York: Oxford University Press, 1977. 24

Bowyer, M.J. *They Carried the Mail: A Survey of Postal History and Hobbies*. Washington: Robert B. Luce, Inc., 1972 ..... 12, 13

Boyer, M.C., *Dreaming the Rational City: The Myth of American City Planning*. Cambridge, MA: MIT Press, 1983. 9

Caliandro, Victor. "Street Form and Use: A survey of principal American street environments," in Stanford Anderson, ed. *On Streets*. Cambridge, MA: MIT Press, 1978. ..... 21, 22

Clapp, J.A. *The City, A Dictionary of Quotable Thought on Cities and Urban Life*. Rutgers, NJ: Rutgers — The State University of New Jersey, 1984 19

Czarnowski, Thomas V. "The Street as a Communications Artifact," in Stanford Anderson, ed. *On Streets*. Cambridge, MA: MIT Press, 1978. ..... 6, 25

"Everybody's Office: Bainbridge post office is key to town's activities," *Postal Life*, March-April, 1980. ..... 17, 18

Festinger, L. "Architecture and Group Membership," *Journal of Social Issues*, 1951 23

Festinger, L., Schacter, S. & Back, K. *Social Pressures in Informal Groups*. New York: Harper & Bros., 1950 23

Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972. ..... 12, 13, 15, 16, 17

Gehl, Jan. *Life Between Buildings*. New York: Van Nostrand Reinhold, 1987 21

Hall, Edward T., "The Anthropology of Space: An Organizing Model." in Proshansky, H.M., Ittelson, W.H., Rivlin, L.G., eds., Environmental Psychology, 2nd Edition. New York: Holt, Rinehart & Winston, 1976 27

Harlow, A.F. *Old Post Bags: The Story of the sending of a letter in ancient and modern times*. New York: D. Appleton & Co., 1928 14

Hiberseimer, Ludwig. *The Nature of Cities*. Chicago: P. Theobald Press, 1955 5

Hill, Michael. *Walking, crossing streets, and choosing pedestrian routes: a survey of recent insights from the behavioral sciences*. University of Nebraska Studies, New Series #66. Lincoln, NE: University of Nebraska, 1984 27

"Home is where the mail is," *Postal Life*, November-December, 1976 18

Jackson, J.B. "Forum Follows Function," in N. Glazer and M. Lilla, eds. *The Public Face of Architecture: Civic Culture and Public Spaces*. New York: The Free Press, 1987 6

Jackson, J.B. "The Almost Perfect Town," in E. Zube, ed. *Landscapes: Selected Writings of J.B. Jackson*. Amherst: The University of Massachusetts Press, 1970 ..... 7, 8

Jackson, J.B. "The American Public Space," in N. Glazer and M. Lilla, eds. *The Public Face of Architecture: Civic Culture and Public Spaces*. New York: The Free Press, 1987 7

Jackson, Kenneth T. *Crabgrass Frontier: The suburbanization of the United States*. New York: Oxford University Press, 1985 21

Kalven, H., Jr. "The Concept of the Public Forum: *Cox v. Louisiana*," in P.B. Kurland, ed. *Free Speech and the First Amendment*. Chicago: University of Chicago Press, 1975 ..... 2, 10, 25

Kalven, H., Jr. "The Central Meaning of the First Amendment," *Supreme Court Review*, 191, 1964. 10

Konwiser, H.M. *Colonial and Revolutionary Posts: A History of the American Postal System; Colonial and Revolutionary Periods*. Richmond, VA: Press of the Dietz Printing Co., 1931. ..... 12, 13, 14

Margolis, R.J. "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983 ... 17, 18, 19, 20

Peck, A.J.A. *The Vision Splendid: Agoric Planning.* Zimbabwe: Three Sisters Books, 1980..... 4, 5

Proshansky, H.M.; Ittelson, W.H.; Rivlin, L.G. (eds.). *Environmental Psychology, 2nd Edition.* New York: Holt, Rinehart & Winston, 1976, pp. 166-167 27

Reizenstein-Carpman, Janet; Grant, Myron A.; and Simmons, Deborah A. *No More Mazes: Research about Design for Wayfinding in Hospitals.* Ann Arbor, MI: University of Michigan Hospitals, 1984..... 26

Rivlin, Leanne G. "A Study of "Found" Public Spaces." Paper read at 21st International Congress of Applied Psychology, July 1986, Jerusalem, Israel. 18

Roper, D.C. *The United States Post Office: Its Past Record, Present Condition and Potential Relation to the New World Era.* New York: Funk and Wagnalls Company, 1917 ..... 11, 12, 13

Rykwert, J. "The Street: The History of its Use," in S. Anderson, ed. *On Streets.* Cambridge, MA: MIT Press, 1978..... 25

Saalman, H. *Medieval Cities.* New York: George Braziller Inc., 1968 7

Scheele, C.H. *A Short History of the Mail Service.* Washington: Smithsonian Institution Press, 1970 .....12, 13

Sennett, Richard. *The Fall of Public Man.* New York: Alfred A. Knopf, 1977. ..... 22, 23

Stone, G.R. "Fora Americana: Speech in Public Places," in P.B. Kurland, ed. *Free Speech and the First Amendment.* Chicago: University of Chicago Press, 1975..... 10

United States Postal Service, *Design Aesthetics and Postal Image: Final Report*, prepared for the Real Estate and Buildings Department by Jay Farbstein & Associates, Inc. and Min Kantrowitz & Associates, Inc., (Deliverable 11) March 31, 1986. ..... 11, 17

United States Postal Service, *History of the U.S. Postal Service 1775-1982.* Publication 100, April 1983..... 12, 13

United States Postal Service, *We Deliver the Mail: The Story of the U.S. Postal Service*..... 12

United States Postal Service, Postal Bulletin 21434, December 1, 1983..... 19

Webster's New Universal Unabridged Dictionary. New York: Simon and Schuster, 1983 5

Whyte, W.H. *The Social Life of Small Urban Spaces.* New York: The Conservation Foundation, 1980.....24

Zucker, Paul. *Town and Square: From the Agora to the Village Green.* New York: Columbia University Press, 1959..... 3, 4, 5

No. 88-2031

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES OF AMERICA,
Petitioner,

v.

MARSHA B. KOKINDA, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF PROJECT FOR PUBLIC SPACES, INC. AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

STATEMENT OF THE CASE

Amicus curiae adopts the factual presentation set forth in Respondents's Statement of the Case.

Counsel of Record for the parties in this case have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of the Court pursuant to Rule 36.

THE FIRST AMENDMENT AND THE PUBLIC FORUM

The institution of the public forum has evolved from an essential human need, developed by historical tradition, into a fundamental legal right. As a locus for the exchange of ideas, views and information, the public forum has played a vital social role in all civilizations and has fulfilled the most basic human need for contact and communication. Only in certain societies, however, has it played an important political role and only in a few polities has the free expression of ideas been basic to the exercise of government. The American polity has been one of those.

This Court has consistently upheld the concept of the public forum as being fundamental to the rights protected by the First Amendment. Since *Hague v. CIO*, 307 U.S. 496 (1939)[1] moreover, it has held that the boundaries of the public forum are to be determined not by the narrow criterion of property ownership but by that of historical use. By combining the right of access to the history of access, *Hague* made critical an understanding of the historical functions of public forums.

A historical-functional analysis of the public forum reveals these facts. First, that the most vital and enduring public forums have been those stimulating public exchange and expression of all kinds. Second, that the distinctiveness of the American public forum has been its linking of free public exchange with political participation, thus making the freedoms guaranteed by democracy central to the working of democracy. Third, that by the variety of services it provides and by the public exchange it stimulates, the American Post Office has served as one of our most important public forums.

[1] See also Kalven, H., Jr., "The Concept of the Public Forum: *Cox v. Louisiana*," in P.B. Kurland, ed. *Free Speech and the First Amendment*. Chicago: University of Chicago Press, 1975.

This brief traces the lineage of the modern American public forum and its relation to the legal right of free speech and thus provides the basis for a functional and historical assessment of the American Post Office as a public forum. The variety of services offered by the Post Office has made it an important generator as well as a center of social intercourse. This brief considers the relevance of that role to the right of free expression. Finally, this brief examines changes in the American landscape that impact upon the role of the Post Office as a public forum and the specific character of the forum in this particular case.

THE GENESIS OF THE PUBLIC FORUM

The public square emerged in Greece after 500 B.C. since, according to architectural historian Paul Zucker, "only in an era where the anonymous human being had become a "citizen", where democracy had unfolded to some extent, could the gathering place become important enough to take on a specific shape."[2] The Indian, Mesopotamian and Egyptian civilizations pre-dating the Greeks had not established those conditions and had not fostered the architectural construction of a political community. Instead, public gatherings took place in the great

[2] Zucker, Paul. *Town and Square: From the Agora to the Village Green*. New York: Columbia University Press, 1959.

markets outside the city walls, where commercial intercourse generated social and intellectual exchange.[3]

City, town, and village centers have, of course, existed from time immemorial and are the result of man's natural tendency to gather in order to benefit from the rich resources of the entire group. Ancient tribal villages, like the modern cities that now stand in their places, had nuclei of communal activity from which footpaths and tracks radiated like spokes of a wheel.[4] All urban forms have had gathering places and centers of commercial or other activity. Indeed many writers have defined society as "people in communication,"[5] and have held that "the great characteristic of the city — and one explanation for its phenomenal growth — is its unique capability . . . to provide physically for an easily accessible web of contacts and exchanges."[6] But what the Greek agora instituted was a gathering place that was a political space, a center that connected public access with political rights.

Much of the meaning of the term "agora" has been lost to the modern ear by its limited translation as

---

[3] Zucker, Paul. *Town and Square: From the Agora to the Village Green*. New York: Columbia University Press, 1959.

[4] Peck, A.J.A. *The Vision Splendid: Agoric Planning*. Zimbabwe: Three Sisters Books, 1980.

[5] Alexander, C., "The City is Not a Tree," *Design*, No. 206, 46-55, cited in Czarnowski, Thomas V., "The Street as a Communications Artifact," in Stanford Anderson, ed., *On Streets*. Cambridge, MA: MIT Press, 1978.

[6] Alexander, C., "The City is Not a Tree," *Design*, No. 206, 46-55, cited in Czarnowski, Thomas V., "The Street as a Communications Artifact," in Stanford Anderson, ed., *On Streets*. Cambridge, MA: MIT Press, 1978.

"marketplace."[7] Initially, according to Homer, the agora was reserved for political gatherings and legislative assemblies.[8] It was the physical embodiment of the Greek "polis", a concept of the state based on the participation and voice of every citizen, and indeed Aristotle recommended that cities be small enough for every citizen to hear the speakers in the agora.[9] The participatory function of the agora was expressed in its accessibility. Peck notes that "as in the tribal village *there was free access throughout the agora*: to anyone entering the agora there was easy and unrestricted access to every amenity."[10] [emphasis in the original]

The openness and centrality of the agora made it the natural venue for human exchange of all kinds, first as markets and then as sacred temples, traditionally located in the acropolis, began to emerge in the free space of the agora. The forum endured and indeed became the "most vital and distinctive element of the city"[11] because it served a multiplicity of functions, involving citizens in political, commercial and intellectual exchanges. "Far from being architecturally impressive, [the agora] was a

---

[7] *Webster's New Universal Unabridged Dictionary*. New York: Simon and Schuster, 1983.

[8] Zucker, Paul. *Town and Square: From the Agora to the Village Green*. New York: Columbia University Press, 1959.

[9] Hilberseimer, Ludwig. *The Nature of Cities*. Chicago: P. Theobald Press, 1955.

[10] Peck, A.J.A. *The Vision Splendid: Agoric Planning*. Zimbabwe: Three Sisters Books, 1980.

[11] Peck, A.J.A. *The Vision Splendid: Agoric Planning*. Zimbabwe: Three Sisters Books, 1980.

jumble of crowded downtown streets and irregular open spaces where shrines and altars, public buildings and monuments stood in the midst of workshops, market stalls, and taverns."[12] The agora's variety of function should be underscored. Urban historians have recognized that "multiplicity of use [of public gathering places] . . . can be considered effective devices for sustaining maximum intensity and choice of communication among members of society."[13]

The agoric sensibility and the function of public spaces persisted through a variety of political forms. The early medieval towns, for example, developed from marketplaces where artisans and merchants found freedom from the domination of feudal lords. The markets and the commercial exchanges that took place there provided the basis for the growing economic and then political independence of the guilds. Having thrown off the yoke of feudalism, medieval townsmen recognized the advantages of opening the city to wider commerce. Fortified towns that remained rooted in paranoia and exclusivity did not grow and were bypassed by the Renaissance. Thus, a significant theme of the Middle Ages was the continuing need for equal access to the marketplace. Howard Saalman notes that "[T]he political ideal and the ideal physical form of the free medieval cities were based on

---

[12] Jackson, J.B., "Forum Follows Function," in N. Glazer and M. Lilla, eds., *The Public Face of Architecture: Civic Culture and Public Spaces*. New York: The Free Press, 1987.

[13] Czarnowski, Thomas V., "The Street as a Communications Artifact," in Stanford Anderson, ed., *On Streets*. Cambridge, MA: MIT Press, 1978.

the general notion that all those who used the city were equal — equally citizens that is."[14]

Later, the emergent freedoms of the medieval city took on a very different function: to reflect the glory and supreme authority of the monarch.[15] The construction of public spaces to express the power of the state rather than the participation of its citizenry persisted in the Post-Absolutist era. People continued to gather and exchange ideas, but did so in streets, markets and places estranged from the seat of government. J.B. Jackson notes that eighteenth century European planners usually kept their open public squares free of construction: "public buildings — churches and palaces and low-courts — were located to face these squares; to command them, as it were."[16] For eighteenth century citizens the concept of the public forum, of the marketplace of ideas accessible to all, manifestly did not extend into the institutions of power. Public squares were instead places "where the inhabitants gathered to pay homage to the authorities within [the public buildings]."[17] By contrast, almost every American town after 1820, according to Jackson, deliberately placed a public building in the center of its square

---

[14] Saalman, H. *Medieval Cities*. New York: George Braziller Inc., 1968.

[15] Hiberseimer, Ludwig. *The Nature of Cities*. Chicago: P. Theobald Press, 1955.

[16] Jackson, J.B., "The Almost Perfect Town," in E. Zube, ed., *Landscapes: Selected Writings of J.B. Jackson*. Amherst: The University of Massachusetts Press, 1970.

[17] Jackson, J.B., "The American Public Space," in N. Glazer and M. Lilla, eds., *The Public Face or Architecture: Civic Culture and Public Spaces*. New York: The Free Press, 1987.

> Sometimes it was a school, sometimes a city hall, more often a courthouse, and it was always approachable from all four sides and always as conspicuous as possible. Why? Why did these pioneer city fathers go counter to the taste of the past in this matter? . . . Perhaps they were so proud of their representative institutions that they wanted to give their public buildings the best location available . . . Thus the square ceased to be thought of in nineteenth century America as a vacant space; it became a container of (if you prefer) a frame. A frame, so it happened, not merely for the courthouse, but for all activity of a communal sort.[18]

But it was more than that. By building their government agencies in the middle of public squares, the nineteenth century Americans showed their government to be part of their common life. They showed that their powerful institutions were included within the realm of free access in the public forum. They resurrected the Greek conjunction of public assembly and participatory government, but on a basis of real equality. Later, American architecture unified public buildings in structure and design and grouped them together in a civic plaza in order to "suggest the cooperative spirit of all the governmental departments, a symbolic representation of the

[18] Jackson, J.B., "The Almost Perfect Town," in E. Zube, ed., *Landscapes: Selected Writings of J.B. Jackson*. Amherst: The University of Massachusetts Press, 1970.

mightiness of a town's development and democracy."[19] In towns and cities across the country — Chicago, Los Angeles, Portland, Seattle, Denver, New York — architects began to plan monumental "civic centers"[20] integrating political and social community in the space of the public domain. What the late nineteenth century planners recognized was that to create the structures of a truly participatory democratic government required public places that drew people together to participate.

The public forum as a space of political freedom has been affirmed in a number of historic legal decisions. Speaking in a plurality opinion, Justice Roberts wrote in *Hague* that

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in

[19] Boyer, M.C., paraphrasing Charles Mulford Robinson, in *Dreaming the Rational City: The Myth of American City Planning*. Cambridge, MA: MIT Press, 1983.

[20] Boyer, M.C., in *Dreaming the Rational City: The Myth of American City Planning*. Cambridge, MA: MIT Press, 1983.

> subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied. *Id.* 515-16.[21]

In *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) the Court enunciated the importance of public exchange to the exercise of democracy saying that "it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected."[22] And in *Sullivan v. New York Times*, 376 U.S. 254 (1964) the Court further specified that public speech be "uninhibited, robust and wide open."[23] These decisions gave legal sanction to the democratic role of the public forum. They defined the public forum as a public space which has served, among other functions, as a locus for the free exchange of ideas and opinions. The American Post Office has served and continues to serve that function.

THE AMERICAN POST OFFICE AS PUBLIC FORUM

> Small post offices in small (and some medium sized) towns take on a community center function since they are sometimes the only point of casual social contact for people in the area.[24]

[21] See Stone, G.R., "Fora Americana: Speech in Public Places," in P.B. Kurland, ed., *Free Speech and the First Amendment*. Chicago: University of Chicago Press, 1975.

[22] See Kalven, H., Jr., "The Concept of the Public Forum: *Cox v. Louisiana*," in P.B. Kurland, ed., *Free Speech and the First Amendment*. Chicago: University of Chicago Press, 1975.

[23] See Kalven, H., Jr., "The Central Meaning of the First Amendment," *Supreme Court Review*, 191; Kalven, H., Jr., "The Concept of the Public Forum: *Cox v. Louisiana*," in P.B. Kurland, ed., *Free Speech and the First Amendment*. Chicago: University of Chicago Press, 1975.

The history of the American Post Office offers a fascinating illustration of the intimate connection between American democratic institutions and the freedoms they have nurtured. This connection is underscored because the primary function of the Postal Service has been to provide uncensored, accessible communication.[25] In performing that function, the Postal Service, and more specifically the thousands of American Post Offices, have served as venues for the exchange of ideas, as public fora in the truest sense of the word. By enlarging the public and political life of the communities they serve, they have strengthened both individual communities and the national community. The stated purpose of the Postal Service is " . . . to bind the nation together through the personal, educational, business and literary correspondence of the people."[26] Indeed, argues Daniel J. Boorstin, "no American institution . . . has been more effective in

[24] United States Postal Service, *Design Aesthetics and Postal Image: Final Report*, prepared for the Real Estate and Buildings Department by Jay Farbstein & Associates, Inc. and Min Kantrowitz & Associates, Inc., (Deliverable 11) March 31, 1986, pp. 3-6. (parentheses in original).

[25] Roper, D.C. *The United States Post Office: Its Past Record, Present Condition and Potential Relation to the New World Era*. New York: Funk and Wagnalls Company, 1917.

[26] 39 U.S.C. § 101(a).

cementing community or more essential to the function and growth of a democratic government."[27]

Organized postal services date back to the ancient world when Persian rulers, recognizing that to control communication was to control government, outfitted messengers to connect a vast empire.[28] The Roman "cursus publicus" improved the speed and efficiency of the Persian model, but like it continued to be limited to government communication. The successor to the Roman post arose from the private individual's need for exchange. Men of learning and men of trade established private postal services in the late Middle Ages to trade ideas and business, and private postal services expanded throughout Western Europe. In England too, private

---

[27] Boorstin, D.J., Editor's preface to Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972.

[28] For general histories of postal service and of the American Postal Service see Bowyer, M.J. *They Carried the Mail: A Survey of Postal History and Hobbies*. Washington: Robert B. Luce, Inc., 1972; Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972; Konwiser, H.M. *Colonial and Revolutionary Posts: A History of the American Postal System: Colonial and Revolutionary Periods*. Richmond, VA: Press of the Dietz Printing Co., 1931; Roper, D.C. *The United States Post Office: Its Past Record, Present Condition and Potential Relation to the New World Era*. New York: Funk and Wagnalls Company, 1917; Scheele, C.H. *A Short History of the Mail Service*. Washington: Smithsonian Institution Press, 1970. See also U.S. Postal Service documents: *History of the U.S. Postal Service 1775-1982*. Publication 100, April 1983; *Evaluation of the United States Postal Service*. Report by a Panel of the National Academy of Public Administration, July 1, 1982, Appendix II; *We Deliver the Mail: The Story of the U.S. Postal Service*.

posts flourished as the government struggled to establish a monopoly over the mail. It did so by greatly improving efficiency and by making the mail accessible, through lowered rates, to all citizens. None of the historical antecedents of the American Post Office was as central to the institution of freedom. These antecedents, however, do provide historical precedents for the notions of government ownership, public access and the exchange of ideas through the mail.[29]

The first American Post Office was established on September 5, 1639 in a Massachusetts tavern; the first American postmaster, Richard Fairbanks, was a tavern keeper.[30] The choice was not surprising, and taverns and coffee houses continued to be the preferred locations for the growing Postal Service; "The coffee houses, in the Colonial Period," wrote historian Harry Konwiser, "were the popular meeting places, the masters of ships making their headquarters there, transacting their business and even the famous Tontine Coffee House had its mail

---

[29] Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972.

[30] Bowyer, M.J. *They Carried the Mail: A Survey of Postal History and Hobbies*. Washington: Robert B. Luce, Inc., 1972. *History of the U.S. Postal Service 1775-1982*. U.S. Postal Service Publication 100, April 1983, Scheele, C.H. *A Short History of the Mail Service*. Washington: Smithsonian Institution Press, 1970; Roper, D.C. *The United States Post Office: Its Past Record, Present Condition and Potential Relation the New World Era*. New York: Funk and Wagnalls Company, 1917. Konwiser, H.C. *Colonial and Revolutionary Posts: A History of the American Postal System; Colonial and Revolutionary Periods*. Richmond, VA: Press of the Dietz Printing Co., 1931.

rack."[31] The arrival of the post became a powerful draw to the coffeehouses as townspeople gathered to collect mail and discuss its contents, trade information about friends and relatives, make business deals and debate public affairs. Tradesmen, sailors and travelers also participated in the common discourse, as well as "hangers-on" who "acquired temporary importance and sometimes a bit of tobacco or a glass of Schiedam Schnapps by circulating information regarding the letters at the public place."[32]

The colonial American Post Office, with its vital news-circulating function, spawned many of America's newspapers, hence the word "post" in the titles of these papers. They replaced the broadsides, leaflets and pamphlets which had been the commerce of opinion and dissent.[33] Benjamin Franklin, appointed Deputy Postmaster in 1753, struck a first blow for the rights later guaranteed by the First Amendment by opening the mail to all newspapers. Prior to that, the prerogative had been in the hands of individual postmasters, often in the pay of moneyed publishers, who were selective about the information they chose to disseminate. In fact Franklin, a

[31] Konwiser, H.M. *Colonial and Revolutionary Posts: A History of the American Postal System; Colonial and Revolutionary Periods*. Richmond, VA: Press of the Dietz Printing Co., 1931.

[32] Konwiser, H.M. *Colonial and Revolutionary Posts: A History of the American Postal System; Colonial and Revolutionary Periods*. Richmond, VA: Press of the Dietz Printing Co., 1931.

[33] Konwiser, H.M. *Colonial and Revolutionary Posts: A History of the American Postal System; Colonial and Revolutionary Periods*. Richmond, VA: Press of the Dietz Printing Co., 1931. See also Harlow, A.F. *Old Post Bags: The Story of the sending of a letter in ancient and modern times*. New York: D. Appleton & Co., 1928.

newspaper editor, had sought appointment as Deputy Postmaster in order to get his own newspaper distributed.[34] Once in office, however, he became committed to reforming the Postal Service and to enhancing its political role, particularly as a way to strengthen the ties between the American colonies. His innovations served to do just that, and as newspapers moved farther away from their places of publication, they acted ". . . to smash old barriers, substitute an American view for local prejudices, and so help convert Englishmen into Americans."[35] The stage was almost set for the Post Office to play a pivotal role in the colonies' struggle for freedom.

In 1774 Franklin was removed from his position as Postmaster General for his questionable allegiance to the Crown; one month later a movement directed against the British Post Office established a "Constitutional Post Office" intended "to rescue the Channel of Public and Private Intelligence out of the Hands of a Power, openly inimical to its Rights and Liberties."[36] The patriots' postal service was crucial in the organization of resistance to the British and indeed it is likely, writes Fuller, "that the gale that swept from the North in the spring of 1775 bringing to Patrick Henry's ears the 'clash of resounding arms' was

[34] Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972.

[35] Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972.

[36] *New York Gazette*, 1774, quoted in Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972.

carried along by the Constitutional Post."[37] It was a powerful force as well in uniting Americans in the war years and in strengthening the precarious revolutionary government.

After the War of Independence the immediate challenge facing the fledgling American republic was to link the American people to their government representatives and to link together the communities of a rapidly expanding nation. As Americans pushed past the Allegheny mountains to the Mississippi River and into the uncharted West, the mail provided much needed support for the pioneers, bringing news, ideas and, most importantly, contact with the outside world. One observer assessed the impact of the nineteenth century post office on the diffusion of knowledge by noting that "[A] rural carrier stated that when he started service some years ago there were but three farmers on his two routes who took daily papers. There are now something like 200 dailies taken by patrons on these routes, some farmers subscribing to two or three."[38]

Recognizing the vital social and political functions of the post, the American government pledged itself to the construction of a comprehensive network of postal routes. The authority for establishing the postal routes was awarded, in a hotly debated and radical move, not to the Postmaster General but to Congress. The rationale was

[37] Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972.

[38] *Evaluation of the United States Postal Service*. Report by a Panel of the National Academy of Public Administration, July 1, 1982, Appendix II, 203.

that the postal system must reflect the needs of the people, who knew the roads better than any single appointed official. Thus from its beginning, the Postal Service has been truly a "people's post office."[39]

As the nation has grown in size and complexity, the Postal Service has continued to provide the communicative link between people of diverse locales and backgrounds. Post Offices in cities, towns and hamlets have served as the nodal points of that exchange, providing the physical facilities for the human intercourse so necessary to community life.[40] In many American Post Offices, writes Richard J. Margolis, "one is likely to find a long wooden bench where citizens can pass the time of day."[41] He describes the Post Office in many American communities as a "mecca"[42]; its users call it a place to "sit around and socialize"[43], "to find out what's happening."[44] It is a

[39] Fuller, W.E. *The American Mail: Enlarger of the Common Life*. Chicago: The University of Chicago Press, 1972.

[40] United States Postal Service, *Design Aesthetics and Postal Image: Final Report*, prepared for the Real Estate and Buildings Department by Jay Farbstein & Associates, Inc. and Min Kantrowitz & Associates, Inc., (Deliverable 11) March 31, 1986, pp. 3-6.

[41] Margolis, R.J., "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983.

[42] Margolis, R.J., "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983.

[43] Margolis, R.J., "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983.

[44] "Everybody's Office: Bainbridge post office is key to town's activities," *Postal Life*, March-April, 1980.

"meeting place,"[45] "the nerve center of the community,"[46] an "open forum,"[47] "like having a general store. It gives everyone the opportunity to come together and see each other.[48] Even in the highly-urbanized setting of current-day Manhattan, the steps of the General Post Office in Midtown continue to be a 'found' space for people to congregate.[49] Congress has acknowledged and supported the variety of functions served by the Post Office by authorizing it to provide a number of non-postal commercial services including money orders, savings bonds and savings accounts, and mailing list services.[50]

Historically, Congress has recognized the important political as well as social and commercial functions of the Post Office. The first American maps were postal maps, and thousands of American towns came to exist officially only when they appeared "on the map"; this may account in part for the civic pride with which local Post Offices are associated.[51] Today, Post Offices continue to impart a pub-

---

[45] "Everybody's Office: Bainbridge post office is key to town's activities," *Postal Life*, March-April, 1980.

[46] "Everybody's Office: Bainbridge post office is key to town's activities," *Postal Life*, March-April, 1980.

[47] "Home is where the mail is," *Postal Life*, November-December, 1976.

[48] "Home is where the mail is," *Postal Life*, November-December, 1976.

[49] Rivlin, Leanne G., "A Study of 'Found' Public Spaces." Paper read at 21st International Congress of Applied Psychology, July 1986, Jerusalem, Israel.

[50] 39 U.S.C. § 404(a); 39 U.S.C. § 111.5(4).

[51] Margolis, R.J., "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983.

lic identity to their communities by giving residents a sense of participation in their broader political institutions. Post Office premises are used for non-partisan voter registration and in certain cases have been used for political campaigning[52] and for fundraising by community groups.[53]

"An American city," remarked Conrad Knickerbocker only half-jokingly, "is a place where the post office looks like the Parthenon."[54] Even small town offices, with "brick on the outside and dark oak within . . . bespeak a federal presence"[55] — but it is an accessible government presence. Recent studies of the Post Office's image reinforce the importance of its image for the community. Random samples of residential customers found that over 78 percent felt that it was important for the Post Office to be a "Symbol of America," a "Good Neighbor," and a "Symbol of Pride for [the] Community."[56] For many communities, the Post Office remains an institution that is open and responsive to all. Speaking against the closing of rural Post Offices, Senator Jennings Randolph of West

---

[52] Postal Bulletin 21434, December 1, 1983.

[53] *Monterey County Democratic Central Committee v. U.S. Postal Service*, 812 F.2d 1194,1197-98 (9th Cir. 1987).

[54] Knickerbocker, C. in *Life*, December 24, 1965, cited in Clapp, J.A. *The City, A Dictionary of Quotable Thought on Cities and Urban Life*. Rutgers, NJ; Rutgers — The State University of New Jersey, 1984.

[55] Knickerbocker, C. in *Life*, December 24, 1965, cited in Clapp, J.A. *The City, A Dictionary of Quotable Thought on Cities and Urban Life*. Rutgers, NJ; Rutgers — The State University of New Jersey, 1984.

[56] Margolis, R.J., "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983.

Virginia reminded Congress that "when the Post Office is closed, the flag comes down;"[57] "when the human side of government closes its doors," he cautioned, "we're all in trouble."[58]

Historically, and still today in many communities, the American Post Office has served as a public forum — a place for the free circulation of ideas and opinions. That function has made the Post Office into one of our most important democratic institutions. By giving Americans a way and a place to communicate, the Post Office has been central to the establishment of democratic government and to ensuring, in an age of large-scale bureaucracies and anonymous public contact, the continuing accessibility and human scale of government. That the Post Office has been and continues to be a locus for expressive activity clearly implies that such activity should continue to receive legal sanction.

As the nodal point of community activity and contact, the Post Office is not only a center of social intercourse but a factor causing social intercourse, stimulating contact and exchange both inside the actual building and in its immediate environs — the sidewalks, parking lots and streets. It thus acts to expand the public forum and the communicative activities which do and should take place there. This important function bears further examination.

---

[57] Cited in Margolis, R.J., "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983.

[58] Cited in Margolis, R.J., "In Rural America the Post Office Remains a Mecca," in *Smithsonian*, July 1983.

The growth of suburban communities in the United States after the Second World War has only served to increase the importance of public forums such as the Post Office. As of the 1980 census, 40 percent of the total United States population lived in suburbs, a greater percentage than those living in either urban or rural areas.[59] This suburbanization became possible because of the automobile, and the physical and functional forms of dispersed buildings and roads found in these suburbs reflect this fact.[60] The distances promoted by the use of the automobile in the suburbs have resulted in changes to traditional pathways for movement and discourse

> The street and activities in and along it promoted [the street's] role as a social condenser and as a locus of common interests . . . . Today these public spaces have often been reduced to automobile rights-of-way. Satisfaction of the demands of private transportation and the management of traffic have usurped the principal role of the urban street — that of promoting an open setting for communication and exchange

---

[59] Jackson, Kenneth T. *Crabgrass Frontier: The suburbanization of the United States*. New York: Oxford University Press, 1985.

[60] Gehl, Jan. *Life Between Buildings*. New York: Van Nostrand Reinhold, 1987. Caliandro, Victor, "Street Form and Use: A survey of Principal American Street environments," in Stanford Anderson, ed. *On Streets*. Cambridge, MA: MIT Press, 1978.

— and transferred this function to building interiors.[61]

The suburbs have truncated the pedestrian street from a network of paths between destinations to separate small spaces linking one's car and one's immediate destination

> Public buildings inserted into this [suburban] pattern hint at localized pedestrian use but rely on associations at the scale of automobile movement. Except for these public buildings there is no significant hierarchy of public exterior space.[62]

*****

> The erasure of alive public space contains an even more perverse idea — that of making space contingent upon motion . . . [in which] the public space is an areas to move through, not be in. . . . The idea of space as derivative from motion parallels exactly the relation of space to motion produced by the private automobile.[63]

In this way, public destinations, such as the Post Office, take on an even more critical position within these contemporary, dispersed communities, where the possi-

[61] Caliandro, Victor, "Street Form and Use: A survey of principal American street environments," in Stanford Anderson, ed. *On Streets*. Cambridge, MA: MIT Press, 1978.

[62] Caliandro, Victor, "Street Form and Use: A survey of principal American street environments," in Stanford Anderson, ed. *On Streets*. Cambridge, MA: MIT Press, 1978.

[63] Sennett, Richard. *The Fall of Public Man*. New York: Alfred A. Knopf, 1977.

bilities for social contact and public forums have been reduced because of "[T]he atomizing of the city [which] has put a practical end to an essential component of public space: the overlay of functions in a single territory which creates complexities of experience on that turf."[64]

STREETS AND SIDEWALKS AS PUBLIC FORUMS

The Post Office, through its official and symbolic purpose of connecting the community to its representatives, to the larger nation and to the wider world, and by its action as a magnet for public activity in the community, creates a vital public gathering space in itself and, equally importantly, along the paths that lead to it. These too become important meeting areas for the community, places where its social, commercial, and political life unfold.

Because of the number of services to which the Post Office attracts users, it generates considerable patron traffic, vehicular and pedestrian, during its hours of operation. The various modes of access to the Post Office define the common activity paths for users, a place where individuals will run into others by mere frequency and propinquity. Common activity paths, which provide recurrent propinquity between persons, are important influences in creating contact and social relationships between persons, even when they are strangers to one another initially.[65] In addition, it is recognized in pedestrian

[64] Sennett, Richard. *The Fall of Public Man*. New York: Alfred A. Knopf, 1977.

[65] Festinger, L. "Architecture and Group Membership," *Journal of Social Issues*, 1951. See also Festinger, L., Schacter, S. & Back, K. *Social Pressures in Informal Groups*. New York; Harper & Bros., 1950.

studies that people seek out concentrations of other people.[66] People place themselves and their social interactions, not at the margins of pedestrian activity, but in the middle of it. As the urban sociologist William H. Whyte notes:

> People [who wanted to interact] didn't move out of the main pedestrian flow. They stayed in it or moved into it, and the great bulk of conversations were smack in the center of the flow — the 100 percent location, to use the real estate term.[67]
>
> *****
>
> People also sit in the mainstream. At the Seagram plaza, the main pedestrian paths are on diagonals from the building entrance to the corners of the steps. These are natural junction and transfer points and there is usually a lot of activity at them. They are also a favored place for sitting and picnicking.[68]

Streets and sidewalks have long been recognized as essential modes of communication. Urban historian Joseph Rykwert urges that we conceive "of the street as an essential carrier of communication, a thing deliberately

---

[66] Gehl, J. "Mennesker til Fods (Pedestrians)," Arkitekten, No. 20, 1968, cited in Alexander, C., *et al. A Pattern Language*. New York: Oxford University Press, 1977. See also Whyte, W.H. *The Social Life of Small Urban Spaces*. New York: The Conservation Foundation, 1980.

[67] Whyte, W.H. *The Social Life of Small Urban Spaces*. New York: The Conservation Foundation, 1980.

[68] Whyte, W.H. *The Social Life of Small Urban Spaces*. New York: The Conservation Foundation, 1980.

created for that purpose and likely to continue in it."[69] That function is discernible throughout history

> It is the urban street that from the first origins of settlement has acted as principal place of public contact and public passage, a place of exchange of ideas, goods and services, a place of play and fight, of carnival and funeral, of protest and celebration. Its place in the web of associations that have sustained human society is therefore paramount.[70]

The street has functioned as the political forum of the poor and powerless, a place for speech, argumentation and the distribution of political opinion. Acknowledging that "pamphlets had become historic weapons in the defense of liberty,"[71] and outspokenly sensitive to this "poor man's printing press,"[72] courts have long upheld the role of "streets as the natural and proper places for the dissemination of information and opinion,"[73] and have protected the rights of written and spoken expression on them. The courts have also extended the scope of the freedom of the streets to include the sidewalks giving ac-

---

[69] Rykwert, J., "The Street: The Use of its History," in S. Anderson, ed. *On Streets*. Cambridge, MA: MIT Press 1978.

[70] Czarnowski, Thomas V., "The Street as a Communications Artifact," in Stanford Anderson, ed. *On Streets*. Cambridge, MA: MIT Press, 1978.

[71] Justice Roberts in *Schneider v. State*, 308 U.S. 147 at 160 (1939), quoted in Kalven, H., Jr. "The Concept of the Public Forum: *Cox v. Louisiana*," in P.B. Kurland, ed. *Free Speech and the First Amendment*. Chicago: University of Chicago Press, 1975.

[72] *Martin v. Struthers*, 319 U.S. 141 (1943).

[73] *United States v. Grace*, 461 U.S. 171 (1983).

cess to public buildings, as for example, the sidewalk surrounding this Court. *United States v. Grace*, 461 U.S. 171 (1983), makes use the criterion of access, and directs attention to the spaces and paths used for access to public buildings.

In the present case, the functional path to the Post Office is the sidewalk leading to the public entrances of the Post Office, the means by which pedestrians and motorists alike gain access to the building, and it is along this sidewalk that contact and interaction occur. The area of intense use is the path of access to the destination, here the Post Office. In observations made at the Bowie, Maryland Post Office, and at a similarly-configured post office in Cherry Hill, New Jersey, under 2 percent of the patrons crossed the municipal sidewalks: 12 crossed over or walked on the municipal sidewalk out of a total of 627 patrons at Bowie, and 12 out of 905 patrons did so at Cherry Hill.[74] Over 98 percent of postal customers arrived by car and then walked to the Post Office building entrance, crossing only the internal sidewalk, or drove into the parking lot and stopped their car by the freestanding mail box in the parking lot to deposit mail. Current research on pedestrians' route choices and navigation through the physical environment confirms that visual contact with the destination is an important element in choosing one's path toward a desired destination.[75] The

[74] The data was collected between 8:30 A.M. and 2:45 P.M. on November 30, 1989 and December 6, 1989 respectively at Bowie and Cherry Hill.

[75] See Reizenstein-Carpman, Janet; Grant, Myron A.; and Simmons, Deborah A. *No More Mazes: Research about Design for Wayfinding in Hospitals*. Ann Arbor, MI: University of Michigan Hospitals, 1984, Hill,

sidewalk on the other side of the parking lot, although located on municipal property, is rarely used as a pedestrian path. It is merely a buffer strip between the parking area and roadway. It would be unusual and a bit perverse to assume that patrons would walk away from their destination in order to cross the municipal sidewalk. Thus, by location and use, the sidewalk directly in front of the Post Office is the public area of contact, of meeting, of exchange; in short, a public forum. This is not in spite of the Post Office but because of it.

To restrict exercise of First Amendment rights to the municipal sidewalk at Bowie, Maryland, for instance, would be to force those wishing to exercise their rights into the unnatural situation of trying to make contact with others either in their cars or on a sidewalk 77 feet away. Social distance for conversations between strangers in the United States has been documented by Edward Hall as between 4 and 12 feet.[76] No public forum or discourse could take place under such conditions. This leads to a dangerously arbitrary designation of what is and is not a public forum.

The old Washington, D.C. Post Office bears an inscription part of which reads "Enlarger of the Common Life, Carrier of News and Knowledge." To deny free

Michael. *Walking, crossing streets, and choosing pedestrian routes: a survey of recent insights from the behavioral sciences*. University of Nebraska Studies, New Series # 66. Lincoln, NE: University of Nebraska, 1984.

[76] Hall, Edward T., "The Anthropology of Space: An Organizing Model." in Proshansky, H.M., Ittelson, W.H., Rivlin, L.G., eds., *Environmental Psychology, 2nd Edition*. New York: Holt, Rinehart & Winston, 1976.

speech access to the Post Offices of the nation or to relegate them to secluded, underused areas is to deny the historic commitment that has been made to them as centers of First Amendment activity.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

ANDREW J. EKONOMOU
(Counsel of Record)

515 Rhodes-Haverty Building
134 Peachtree Street, N.W.
Atlanta, Georgia 30303
(404) 221-1000
Counsel for Amicus Curiae

December 18, 1989